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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

In re Marriage of SHANNA J. and
CHARLES A. HAMM.

2d Civil No. B287256
(Super. Ct. No. SD037480)
(Ventura County)

SHANNA J. HAMM,

Petitioner,

v.

CHARLES A. HAMM,

Appellant;

VENTURA COUNTY
DEPARTMENT OF CHILD
SUPPORT SERVICES,

Intervener and Respondent.

Charles A. Hamm, in propria persona, appeals orders
of the family law court requiring him to pay one-half of a \$3,000

attorney fee retainer to his child's private counsel.¹ (Fam. Code, §§ 3150, 3153, subd. (a).)² We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Charles and Shanna separated in 2008 following a long-term marriage. The parties have three minor children, including D., now a teenager. As parents they share legal and physical custody of the children. Currently, one child resides with each parent and the youngest child divides his time between them.

Charles and Shanna divorced in 2009 and each has remarried. Charles now has a minor child with his subsequent wife. According to Shanna's income and expense declaration dated October 13, 2017, she is self-employed as a bookkeeper earning an average of \$1,559 monthly. According to Charles's income and expense declaration dated October 12, 2017, he is self-employed as a real estate salesman earning an average of \$1,800 monthly.

In August 2017, Charles filed a motion to modify child custody regarding D. Following a hearing, the family law court appointed private counsel to represent D.'s best interests. In ruling, the trial judge stated: "I'm making a finding that . . . child custody and visitation are highly contested The child is subject to stress as a result And that stress might be alleviated by appointing counsel to represent the minor child. Counsel representing the minor child will be likely to provide the Court with relevant information not otherwise readily available.

¹ We shall refer to the parties by their first names not from disrespect, but to ease the reader's task.

² All statutory references are to the Family Code.

This is pursuant to Family Code section 3150 for the reasons as set forth in [California Rules of Court, rule] 5.240(a).”

The family law court also ordered Charles and Shanna each to pay one-half of the appointed attorney’s \$3,000 retainer. Charles objected and stated that he could not afford to pay. Approximately one week later, Charles filed a motion for reconsideration. At the outset of the hearing concerning a report from D.’s counsel, the court denied Charles’s motion for reconsideration.

Charles appeals and contends that the family law court abused its discretion by ordering him to pay a portion of the fee retainer. (Cal. Rules of Court, rule 5.241(b)-(d).)

DISCUSSION

Charles argues that the family law court did not expressly determine his ability to pay prior to allocating his payment for D.’s appointed counsel. He adds that California Rules of Court, rule 5.241(b) requires the court to determine the parties’ respective financial abilities to pay all or a portion of counsel’s compensation. Charles points out that the court waived his filing fees due to his lack of ability to pay.

Section 3150 authorizes the family law court to appoint private counsel to represent the interests of the children in a custody or visitation dispute. Section 3153 provides for the payment of counsel’s fees. It reads: “(a) If the court appoints counsel under this chapter to represent the child, counsel shall receive a reasonable sum for compensation and expenses, the amount of which shall be determined by the court. Except as provided in subdivision (b), this amount shall be paid by the parties in the proportions the court deems just. [¶] (b) Upon its own motion or that of a party, the court shall determine whether both parties together are financially unable to pay all or a portion

of the cost of counsel appointed pursuant to this chapter, and the portion of the cost of that counsel which the court finds the parties are unable to pay shall be paid by the county. . . .” As with child support orders, the court considers the financial resources of the parties in setting the amount that a parent pays for a child’s counsel. (Cal. Rules of Court, rule 5.241(b)(1).)

The standard of review for an award or allocation of attorney fees in a family law proceeding is abuse of discretion. (*In re Marriage of Sullivan* (1984) 37 Cal.3d 762, 768-769.) The family law court’s order “will be overturned only if, considering all the evidence viewed most favorably in support of its order, no judge could reasonably make the order made.” (*In re Marriage of Smith* (2015) 242 Cal.App.4th 529, 532 [award of attorney fees in child custody and support proceeding].) Appellant bears the burden of establishing an abuse of discretion. (*Kevin Q. v. Lauren W.* (2011) 195 Cal.App.4th 633, 642, 686.)

Although the family law court made no express determination of ability to pay, we presume the court reviewed the income and expense declarations filed in connection with the motion for reconsideration. (*Ross v. Superior Court* (1977) 19 Cal.3d 899, 913 [presumption that court knows and applies correct principles of law].) The income and expense declarations filed with Charles’s motion for reconsideration provide sufficient evidence of the parties’ ability to pay the appointed counsel’s retainer. A judgment or order of the trial court is presumed to be correct; all intendments and presumptions are drawn in favor of the order on matters to which the record is silent. (*In re Marriage of Obrecht* (2016) 245 Cal.App.4th 1, 8.) Charles has not demonstrated error.

The orders are affirmed. The parties shall bear their own costs on appeal.

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GILBERT, P. J.

We concur:

YEGAN, J.

PERREN, J.

JoAnn Johnson, Judge

Superior Court County of Ventura

Charles A. Hamm, in pro. per., for Appellant.

No appearance for Intervener and Respondent Ventura
County Department of Child Support Services.